

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 24772 of 2007(Y)

PETITIONER:

**V.N.UPENDRAN, S/O LATE A.K.NARAYANAN,
VADEKKEKANDATHIL PARAMBIL HOUSE, EDAKOCHI,
KOCHI-06.**

**BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON**

RESPONDENTS:

**1. THE MATTANCHERRY MAHAJANIK CO-OPERATIVE
URBAN BANK LTD., NO.665, COCHIN-02 REPRESENTED
BY ITS SECRETARY.**

**2. THE RECOVERY OFFICER,
THE MATTANCHERRY MAHAJANIK CO-OPERATIVE URBAN
BANK LTD., NO.665, COCHIN-02.**

**R1 & R2 BY ADV. SRI.N.HARIDAS
SRI.P.N.SASIDHARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE SALE NOTICE SIGNED BY THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS:

EXT.R1(a): COPY OF APPLICATION DATED 2.7.1999 SUBMITTED BY THE PETITIONER'S FATHER LATE A.K.NARAYANAN BEFORE THE 1ST RESPONDENT.

EXT.R1(b): COPY OF PARTITION DEED NO.1223 DATED 7.4.1988 OF THE KOCHI SUB REGISTRY EXECUTED BY THE PETITIONER'S FATHER LATE NARAYANAN AND HIS BROTHER SANKUNNY.

EXT.R1(c): COPY OF PROMISSORY NOTE DATED 29.9.1999 FOR Rs.2 LAKHS EXECUTED BY THE PETITIONER'S FATHER LATE A.K.NARAYANAN AND HIS SURETY Mrs.P.G. GANALEELA IN FAVOUR OF THE 1ST RESPONDENT BANK.

EXT.R1(d): COPY OF DOCUMENT No.LT-17 EXECUTED BY THE PETITIONER'S FATHER , LATE A.K.NARAYANAN AND HIS SURETY MRS.P.G.GANALEELA IN FAVOUR OF THE 1ST RESPONDENT BANK.

EXT.R1(e): COPY OF MEMORANDUM OF DEPOSIT OF TITLE DEEDS GIVEN BY THE PETITIONER'S FATHER, LATE NARAYANAN IN FAVOUR OF THE 1ST RESPONDENT BANK, EVIDENCING THE DEPOSIT OF TITLE DEED.

EXT.R1(f): COPY OF ORDER NO.4035/99-2000 DATED 25.9.1999 ISSUED BY THE BOARD OF DIRECTORS OF THE 1ST RESPONDENT BANK TO THE PETITIONER'S FATHER LATE A.K.NARAYANAN.

EXT.R1(g): COPY OF RELEVANT PAGE OF THE LOAN LEDGER IN RESPECT OF THE LOAN ACCOUNT NO.L.T.17 OF THE PETITIONER'S FATHER LATE A.K.NARAYANAN, MAINTAINED BY THE 1ST RESPONDENT BANK.

EXT.R1(h): COPY OF SECTION 13(2) NOTICE DATED 5.6.2004 ISSUED BY THE 1ST RESPONDENT BANK TO THE PETITIONER'S FATHER LATE A.K.NARAYANAN BY REGISTERED POST WITH ACK/DUE.

EXT.R1(h)(a): COPY OF RETURNED POSTAL COVER ALONG WITH THE ENDORSEMENT.

EXT.R1(i): COPY OF SECTION 13(2) NOTICE DATED 5.6.2004 ISSUED BY THE 1ST RESPONDENT BANK TO THE SURETY Mrs.P.G. GANALEELA.

EXT.R1(i)(a): COPY OF ACKNOWLEDGEMENT RECEIPT SIGNED BY THE SURETY Mrs.P.G.GANALEELA FOR HAVING RECEIVED EXT.R1(i) NOTICE.

EXT.R1(j): COPY OF CERTIFICATE NO.CR 2540/04 DATED 1.12.2004 ISSUED BY THE VILLAGE OFFICER, EDAKOCHI TO THE RECOVERY OFFICER OF THE 1ST RESPONDENT BANK.

EXT.R1(k): COPY OF 13(2) NOTICE DATED 1.9.2004 SENT BY THE 1ST RESPONDENT BANK, WHICH WAS REFUSED AND RETURNED BY THE LEGAL HEIR OF LATE NARAYANAN, VIZ. SUBRAMANNIAN.

EXT.R1(k)(a): COPY OF THE COVER IN WHICH EXT.R1(k) NOTICE WAS ENCLOSED, CONTAINING THE ENDORSEMENT.

EXT.R1(k)(b): COPY OF ACKNOWLEDGMENT CARD OF EXT.R1(k) NOTICE.

EXT.R1(l): COPY OF NOTICE DATED 1.9.2004 SENT BY THE 1ST RESPONDENT BANK, WHICH WAS REFUSED AND RETURNED BY THE PETITIONER.

EXT.R1(l)(a): COPY OF COVER IN WHICH EXT.R1(l) NOTICE WAS ENCLOSED, CONTAINING THE ENDORSEMENT.

EXT.R1(l)(b): COPY OF ACKNOWLEDGMENT CARD OF EXT.R1(l) NOTICE.

EXT.R1(m): COPY OF SECTION 13(2) NOTICE DATED 1.9.2004 SENT BY THE 1ST RESPONDENT BANK, WHICH WAS REFUSED AND RETURNED BY SMT.RADHA, STEPMOTHER OF THE PETITIONER.

EXT.R1(m)(a): COPY OF COVER IN WHICH EXT.R1(m) NOTICE WAS ENCLOSED, CONTAINING THE ENDORSEMENT.

EXT.R1(m)(b): COPY OF ACKNOWLEDGEMENT CARD OF EXT.R1(m) NOTICE.

EXT.R1(n): COPY OF SECTION 13(2) NOTICE DATED 1.9.2004 ISSUED BY THE 1ST RESPONDENT BANK TO MANASA, THE DAUGHTER OF LATE A.K.NARAYANAN.

EXT.R1(o): THE PHOTOSTAT COPY OF SECTION 13(2) NOTICE DATED 1.9.2004 ISSUED BY THE 1ST RESPONDENT BANK TO MANJU, THE DAUGHTER OF LATE A.K.NARAYANAN.

EXT.R1(p): COPY OF REMINDER DATED 31.7.2007 ISSUED BY THE 1ST RESPONDENT BANK TO THE SURETY, P.G.GANALEELA BY HAND DELIVERY.

EXT.R1(q): COPY OF UNOPENED COVER ADDRESSED TO THE SUBRAMANNIAN, THE LEGAL HEIR OF LATE A.K.NARAYANAN, CONTAINING REMINDER DATED 17.8.2007 SENT BY THE 1ST RESPONDENT BANK.

EXT.R1(q)(a): COPY OF UNIPENED COVER ADDRESSED TO RADHA, STEPMOTHER OF THE PETITIONER, THE LEGAL HEIR OF LATE A.K.NARAYANAN, CONTAINING REMINDER DATED 17.8.2007 SENT BY THE 1ST RESPONDENT BANK.

EXT.R1(q)(b): COPY OF UNOPENED COVER ADDRESSED TO MANASA, DAUGHTER AND THE LEGAL HEIR OF LATE A.K.NARAYANAN, CONTAINING REMINDER DATED 17.8.2007 SENT BY THE 1ST RESPONDENT BANK.

EXT.R1(q)(c): COPY OF UNOPENED COVER ADDRESSED TO MANJU, DAUGHTER AND THE LEGAL HEIR OF LATE A.K.NARAYANAN, CONTAINING REMINDER DATED 17.8.2007 SENT BY THE 1ST RESPONDENT BANK.

EXT.R1(q)(d): COPY OF UNOPENED COVER ADDRESSED TO P.G.GANALEELA, SURETY OF LATE A.K.NARAYANAN, CONTAINING REMINDER DATED 17.8.2007 SENT BY THE 1ST RESPONDENT BANK.

EXT.R1(r): COPY OF REMINDER DATED 10.8.2007 ISSUED BY THE 1ST RESPONDENT BANK TO THE PETITIONER BY REGISTERED POST WITH ACK/DUE TOGETHER WITH RECEIPT NO.5612 DATED 14.8.2007 OF THE MATTANCHERRY POST OFFICE, KOCHI-2.

EXT.R1(r)(a): COPY OF ACKNOWLEDGEMENT CARD SIGNED BY THE PETITIONER FOR HAVING RECEIVED EXT.R1(r) REMINDER.

EXT.R1(s): COPY OF CIRCULAR NO.30/2007 DATED 3.5.2007 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.

EXT.R1(t): COPY OF CALCULATION STATEMENT PREPARED BY THE 1ST RESPONDENT BANK AS ON 17.10.2007.

EXT.R1(u): COPY OF CALCULATION STATEMENT PREPARED BY THE 1ST RESPONDENT BANK AS ON 17.11.2007.

TRUE COPY

P.A.TO JUDGE

THOTTATHIL B.RADHAKRISHNAN,J

=====

W.P.(C).No.24772 of 2007

=====

Dated this the 24th day of October, 2007

JUDGMENT

Heard.

2. In the additional counter affidavit of the Bank it is pointed out that as per Ext.R1(t) calculation statement it would be sufficient that the petitioner remits an amount of Rs.3,12,361/- as on 17.10.2007 instead of Rs.4,36,422/-. The petitioner does not dispute Ext.R1(t). Having heard the parties, I do not find any ground to interfere with the recovery proceedings if it is based on the amount due in Ext.R1(t).

Under the aforesaid circumstances, this writ petition is disposed of directing that if the amount of Rs.3,12,361/- as on 17.10.2007 with accruing interest on that amount, at the rate of 15% per annum, is paid by the petitioner by remitting an amount of Rs.1,00,000/- on or before the last working day of December 2007, and the balance in five equal monthly instalments payable on or before the last working day of every

month commencing from January, 2008, distress action for recovery will be dropped. If the petitioner commits default in remitting any of the instalments as aforesaid, the benefit of this judgment will stand recalled automatically and the respondents will be at liberty to forthwith proceed with distress action.

THOTTATHIL B.RADHAKRISHNAN, JUDGE

dvs